

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

DEBRA JOAN RICHARDSON,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting  
Commissioner of the Social Security  
Administration,

Defendant.

CASE NO. 2:15-cv-01640 JRC

ORDER ON PLAINTIFF'S  
COMPLAINT

This Court has jurisdiction pursuant to 28 U.S.C. § 636(c), Fed. R. Civ. P. 73 and Local Magistrate Judge Rule MJR 13 (*see also* Notice of Initial Assignment to a U.S. Magistrate Judge and Consent Form, Dkt. 7; Consent to Proceed Before a United States Magistrate Judge, Dkt. 8). This matter has been fully briefed (*see* Dkt. 17, 20, 22).

After considering and reviewing the record, the Court concludes that the ALJ did not commit harmful legal error in the evaluation of plaintiff's claim. Plaintiff made inconsistent claims about her drug use as well as about her physical limitations and

1 activities, and much of the medical opinion evidence either relied on her subjective  
2 reports or was inconsistent with plaintiff's stated lack of symptoms, her MSE results or  
3 her activities. Therefore, this matter is affirmed pursuant to sentence four of 42 U.S.C. §  
4 405(g).

5 BACKGROUND

6 Plaintiff, DEBRA JOAN RICHARDSON, was born in 1956 and was 55 years old  
7 on the amended alleged date of disability onset of February 1, 2012 (*see AR. 19, 188-93*).  
8 Plaintiff attended high school and during her senior year attended a beauty school for half  
9 days (AR. 62). Plaintiff has work experience as a hair stylist (AR. 222-37). She alleges  
10 that she left her last employment when her back got worse and her contract was not  
11 renewed (AR. 69).

13 According to the ALJ, plaintiff has at least the severe impairment of "degenerative  
14 disk disease (DDD) of the lumbar spine (20 CFR 416.920(c))" (AR. 21).

15 At the time of the hearing, plaintiff was living with her 80-year-old mother (AR.  
16 59).

17 PROCEDURAL HISTORY

18 Plaintiff's application for Supplemental Security Income ("SSI") benefits pursuant  
19 to 42 U.S.C. § 1382(a) (Title XVI) of the Social Security Act was denied initially and  
20 following reconsideration (*see AR. 96-103, 105-13*). Plaintiff's requested hearing was  
21 held before Administrative Law Judge Tom L. Morris ("the ALJ") on January 22, 2014  
22 (*see AR. 49-94*). On March 7, 2014, the ALJ issued a written decision in which he  
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1 concluded that plaintiff was not disabled pursuant to the Social Security Act (*see* AR. 16-  
2 43).

3 In plaintiff's Opening Brief, plaintiff raises the following issues: (1) The ALJ  
4 erred in his finding of fact (No. 2) finding that plaintiff's only "severe impairment" is her  
5 "degenerative disk disease of the lumbar spine"; (2) The ALJ erred in his finding of fact  
6 (No. 4) with respect to the plaintiff's overall capacity of full time employment (her  
7 "RFC"); (3) The ALJ erred in his finding of fact (No. 5), determining that plaintiff is  
8 capable of performing and maintaining full time employment in her past occupation of  
9 cosmetologist; (4) The ALJ erred in not discharging his obligation to fully develop the  
10 record, particularly given his rejecting of the treating and examining and even non-  
11 examining medical sources' opinions, without evidence or medical opinion sufficient to  
12 support rejection of those opinions and plaintiff's testimony; and (5) The ALJ erred in  
13 rejecting plaintiff's credibility, *e.g.*, concerning the severity of her impairments (*see* Dkt.  
14 17, pp. 1-2).

16 STANDARD OF REVIEW

17 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's  
18 denial of social security benefits if the ALJ's findings are based on legal error or not  
19 supported by substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d  
20 1211, 1214 n.1 (9th Cir. 2005) (*citing Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir.  
21 1999)).

## **DISCUSSION**

(1) Did the ALJ err in his finding of fact (No. 2) finding that plaintiff's only "severe impairment" is her "degenerative disk disease of the lumbar spine"?

Plaintiff first contends that the ALJ erred at step two when concluding that plaintiff's only severe impairment is degenerative disc disease of the lumbar spine (Dkt. 17, pp. 4-9). Defendant contends that there is no error.

Step-two of the administration's evaluation process requires the ALJ to determine if the claimant "has a medically severe impairment or combination of impairments." *Smolen v. Chater*, 80 F.3d 1273, 1289-90 (9th Cir. 1996) (citation omitted); 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii) (1996). An impairment is "not severe" if it does not "significantly limit" the ability to conduct basic work activities. 20 C.F.R. §§ 404.1521(a), 416.921(a). "An impairment or combination of impairments can be found 'not severe' only if the evidence establishes a slight abnormality that has 'no more than a minimal effect on an individual[']s ability to work.'" *Smolen, supra*, 80 F.3d at 1290 (quoting Social Security Ruling "SSR" 85-28) (citing *Yuckert v. Bowen*, 841 F.2d 303, 306 (9th Cir. 1988)).

The ALJ found that plaintiff's gastrointestinal impairment has "been intermittent and [has] resolved with her abstinence from alcohol and opiates" (AR. 22). The ALJ includes a lengthy discussion of the record in support of this finding, including noting that in May 2011, plaintiff "reported that her abdominal pain had resolved since she had ceased drinking alcohol" (AR. 23 (*citing* AR. 322)). Although plaintiff cites two clinic visits in support of her argument that her gastrointestinal issues continued, substantial

1 evidence in the record supports the ALJ's finding that plaintiff's gastrointestinal issues  
2 resolved. For example, on September 10, 2012, plaintiff's treatment record indicates that  
3 during her review of symptoms, regarding her gastrointestinal issues, she reported that  
4 she was negative "for abdominal pain, constipation, diarrhea and vomiting" (AR. 1046).  
5 Similarly, on October 4, 2013, when asked to circle any symptoms that she currently was  
6 experiencing, plaintiff declined to circle any of the symptoms under gastrointestinal,  
7 including abdominal pain (AR. 949). In addition, on May 1, 2013, plaintiff's review of  
8 symptoms indicated that with respect to her gastrointestinal issues, plaintiff was negative  
9 "for abdominal pain, constipation, diarrhea and vomiting" (AR. 1002).

10       The ALJ also included an extended discussion regarding how plaintiff's  
11 "distended stomach and duodenum appear to have resolved since [plaintiff's] amended  
12 alleged onset date, despite her continued alcohol use" (AR. 24). The ALJ cited numerous  
13 treatment records in support of this finding, including "benign abdominal findings" on  
14 multiple occasions and examinations which "consistently found a soft, non-tender, non-  
15 distended, and otherwise normal abdomen" (*id.* (citing AR. 863, 866-67, 871, 876, 879,  
16 944, 946, 977, 1037-47, 1000-03)). The ALJ's finding is based on substantial evidence in  
17 the record as a whole.

18       For the reasons stated, the Court concludes that the ALJ's finding that plaintiff's  
19 abdominal pain and gastrointestinal issues had resolved when she ceased drinking alcohol  
20 and did not comprise a severe impairment during the relevant period is a finding based on  
21 substantial evidence in the record as a whole. Although plaintiff also contends in the  
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1 same section that the ALJ improperly disregarded her lower extremity pain, plaintiff  
2 includes no argument or citation in support of this allegation.

3 Plaintiff also contends that the ALJ erred when failing to conclude that plaintiff  
4 suffered from any severe mental impairment, such as depression or anxiety (Dkt. 17, pp.  
5 5-8). Plaintiff faults the ALJ for discussing evidence prior to her amended alleged date of  
6 disability onset, however the ALJ also cited evidence after plaintiff's alleged date of  
7 disability onset to support that plaintiff did not suffer from a severe mental impairment  
8 such as depression or anxiety (*see AR. 27*). For example, the ALJ noted that medical  
9 examination in March 2012 resulted in the observation of "no unusual anxiety or  
10 evidence of depression" (AR. 26-27 (*citing AR. 692*)). The ALJ also pointed out that in  
11 April 2012, plaintiff "was able to recall three of three memorized items after a delay, and  
12 correctly spelled 'world' backwards" (AR. 27 (*citing AR. 710-16*))), and that during  
13 psychotherapy "between September 2012 and October 2013, [plaintiff] consistently  
14 demonstrated appropriate appearance, unremarkable behavior, appropriate speech,  
15 euthymic mood, average intellect, cooperative attitude, maintained attention, intact  
16 memory, logical thought process, and fair judgment" (*id. (citing AR. 967, 971-72, 984-*  
17 *85, 988-89, 992-93, 1028, 1034, 1042*)). Finally, the ALJ noted that in October, 2012,  
18 plaintiff was started on antidepressants and "reported being happy and having improved  
19 interpersonal relationships during psychotherapy in December 2012 and January 2013"  
20 (*id.; see also AR. 1018, 1022, 1027* (on December 14, 2012, "she reports that she is  
21 happy")), 1037). The Court has reviewed the cited treatment records and concludes that  
22 the ALJ's findings are supported by substantial evidence in the record as a whole.  
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1 Plaintiff did not provide sufficient evidence demonstrating that her alleged mental  
2 impairments caused “more than a minimal effect on [her] ability to work.” See *Smolen*,  
3 *supra*, 80 F.3d at 1290 (quoting Social Security Ruling “SSR” 85-28) (citing *Yuckert*,  
4 *supra*, 841 F.2d at 306).

5 Regarding the establishment of a disability, it is claimant’s burden to “furnish[]  
6 such medical and other evidence of the existence thereof as the Secretary may require.”  
7 *Yuckert, supra*, 482 U.S. at 146 (quoting 42 U.S.C. § 423(d)(5)(A)) (citing *Mathews v.*  
8 *Eldridge*, 424 U.S. 319, 336 (1976)) (footnote omitted).

9 Therefore, for the reasons stated, the Court concludes that the ALJ’s finding that  
10 plaintiff’s “evidence of record since her amended alleged onset date further documents  
11 that [plaintiff] retains normal social and cognitive functioning despite her substance use  
12 disorder and other psychological impairments” is a finding based on substantial evidence  
13 in the record as a whole (AR. 26). The ALJ did not err when concluding that plaintiff did  
14 not suffer from a severe mental impairment.

16 In support of plaintiff’s argument regarding her severe impairments, plaintiff cites  
17 medical evidence from her therapist Ms. Laurie Jones, but does not address the reasons  
18 offered by the ALJ for the failure to credit fully the opinions of Ms. Jones (*see Dkt. 17,*  
19 pp. 5-6). For example, the ALJ found that “Ms. Jones’ opinions are inconsistent with  
20 [plaintiff’s] purported activities and longitudinal psychological findings, including those  
21 documented by Ms. Jones” (AR. 29). The ALJ again noted that “during psychotherapy  
22 with Ms. Jones between September 2012 and October 2013, [plaintiff] consistently  
23 demonstrated appropriate appearance, unremarkable behavior, appropriate speech,

1 euthymic mood, average intelligence, cooperative attitude, maintained attention, intact  
2 memory, logical thought process, and fair judgment (AR. 29-30 (*citing* AR. 967, 971-72,  
3 984-85, 988-89, 992-93, 1028, 1034, 1042)). As already concluded by the Court, these  
4 notations by the ALJ reflect an accurate representation of the record. The Court also  
5 concludes that they entail germane reasons for failing to credit fully the lay opinion of  
6 Ms. Jones. *See Turner v. Comm'r of Soc. Sec.*, 613 F.3d 1217, 1224 (9th Cir. 2010)  
7 (*quoting Lewis v. Apfel*, 236 F.3d 503, 511 (9th Cir. 2001)); *see also Van Nguyen v.*  
8 *Chater*, 100 F.3d 1462, 1467 (9th Cir. 1996) (An ALJ may disregard lay opinion  
9 evidence “if the ALJ ‘gives reasons germane to each witness for doing so’”).  
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11 Similarly, plaintiff contends that the ALJ erred by failing to credit fully the  
12 opinions of non-examining doctor, Dr. David Deutsch. However plaintiff only finds error  
13 with one of the reasons provided by the ALJ for failing to credit fully this opinion (*see*  
14 Dkt. 17, pp. 6-7). In addition to noting in a footnote that Dr. Deutsch did not include his  
15 qualifications in his opinion, the ALJ also noted that “Dr. Deutsch did not refer to any  
16 records nor did he list what records he had reviewed” (AR. 27-28). The ALJ also noted  
17 that Dr. Deutsch’s “only reference to any evidence whatsoever was a Global Assessment  
18 of Functioning (GAF) score of 29” (AR. 28 (*citing* AR. 301)). The ALJ found that this  
19 GAF score is “incompatible with [plaintiff’s] reported activities and psychological  
20 findings throughout the record” (*id.*). The ALJ’s references to the record are accurate, and  
21 the Court concludes that the ALJ’s finding that the only evidence listed by Dr. Deutsch in  
22 support of his opinion is “incompatible with [plaintiff’s] reported activities and  
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1 psychological findings throughout the record” is based on substantial evidence in the  
 2 record as a whole, as discussed above, *see supra*.

3 Plaintiff cites to other medical opinions and argues that the opinions support  
 4 plaintiff’s claim that her mental impairments are severe (*see* Dkt. 17, p. 7 (*citing* AR.  
 5 293, 299, 727)). However, the question before this Court is not whether or not evidence  
 6 supports plaintiff’s allegations, but whether or not substantial evidence in the record  
 7 supports the findings by the ALJ. It is not the job of the court to reweigh the evidence: If  
 8 the evidence “is susceptible to more than one rational interpretation,” including one that  
 9 supports the decision of the Commissioner, the Commissioner’s conclusion “must be  
 10 upheld.” *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002) (*citing Morgan v.*  
 11 *Comm’r of Soc. Sec. Admin.*, 169 F.3d 595, 599, 601 (9th Cir. 1999)).

13 For the reasons stated and based on the record as a whole, Court concludes that the  
 14 ALJ did not err by finding that plaintiff’s only severe impairment is degenerative disc  
 15 disease (“DDD”).

16       **(2) Did the ALJ err in his finding of fact (No. 4) with respect to the**  
 17 **plaintiff’s overall capacity of full time employment (her “RFC”)?**

18 Plaintiff contends that the ALJ erred when formulating her residual functional  
 19 capacity (“RFC”). Defendant contends that there is no error.

20 As noted by the Ninth Circuit, “Social Security Regulations define residual  
 21 functional capacity as the ‘maximum degree to which the individual retains the capacity  
 22 for *sustained* performance of the physical-mental requirements of jobs.’ *Reddick v.*  
 23 *Chater*, 157 F.3d 715, 724 (9th Cir. 1998)) (*quoting* 20 C.F.R. § 404, Subpart P, App. 2 §  
 24

1 200.00(c)) (emphasis added by Ninth Circuit); *see also* SSR 96-8p, 1996 SSR LEXIS 5 at  
 2 \*5. RFC is the most a claimant can do despite existing limitations. *See* 20 C.F.R. §§  
 3 404.1545(a), 416.945(a); *see also* 20 C.F.R. § 404, Subpart P, App. 2 § 200.00(c).

4 Plaintiff contends that the ALJ's finding regarding her RFC "is flawed because it  
 5 excludes limitations caused by the plaintiff's severe impairments other than the plaintiff's  
 6 degenerative disc disease" (Dkt. 17, p. 9). However, the Court already has concluded that  
 7 the ALJ did not err when determining that plaintiff's DDD was her only severe  
 8 impairment, *see supra*, section 1.

9 Plaintiff also contends that the RFC finding is "in error because it is premised  
 10 upon wrongful rejection of the opinions of treating and examining doctors and other  
 11 medical sources who repeatedly opined and described the plaintiff as not having the RFC  
 12 specified by the ALJ" (Dkt. 17, p. 9). However, again, although plaintiff lists the opinions  
 13 of several medical sources who opined that plaintiff was limited to sedentary work,  
 14 plaintiff fails to acknowledge the ALJ's reasoning for rejecting these opinions and fails to  
 15 discuss any specific alleged errors in the ALJ's discussion and rejection of these medical  
 16 opinions.

17 Defendant argues that the "Ninth Circuit 'has repeatedly admonished that [a court]  
 18 cannot 'manufacture arguments for an appellant'"' (*see* Dkt. 20, p. 11 (*citing* *Indep.*  
 19 *Towers of Washington v. Washington*, 350 F.3d 925, 929 (9th Cir. 2003) (*quoting*  
 20 *Greenwood v. Fed. Aviation Admin.*, 28 F.3d 971, 977 (9th Cir. 1994)). Defendant notes  
 21 that the Ninth Circuit indicated that "a court will 'review only issues which are argued  
 22 specifically and distinctly in a party's opening brief'" (*id.* (*quoting* *Greenwood*, *supra*, 28

1 F.3d at 977)). Defendant argues that because plaintiff has not specifically challenged the  
 2 sufficiency of the ALJ's reasons for discounting the medical opinions limiting plaintiff to  
 3 sedentary work that this "amounts to waiver of that issue, which is fatal to her argument  
 4 that the ALJ should have assessed the RFC differently" (*id.*). This argument is  
 5 persuasive. However, the Court notes that it has reviewed the ALJ's written decision in  
 6 full, including the ALJ's reasons for failing to credit fully various medical opinions, and  
 7 has reviewed defendant's arguments in support of the ALJ's rationale (*see id.* at 11-13).  
 8

9       The Court concludes that the ALJ's reasons are supported by substantial evidence  
 10 in the record as a whole. For example, despite plaintiff's reference to multiple medical  
 11 opinions regarding a limitation to sedentary work, the ALJ referenced many normal  
 12 findings following examination of plaintiff such as "good flexion in her lumbar spine,  
 13 normal gait and station, negative Romberg sign, bilaterally negative straight leg raises  
 14 (SLRs), normal reflexes, and normal strength and normal sensation, as well as her routine  
 15 denials of backache" (AR. 34 (citations omitted)). In addition, the ALJ noted that plaintiff  
 16 reported feeling better after using a home exercise program, and reported that she was  
 17 babysitting (*id.*). At her hearing, plaintiff testified that she walks twice a week and  
 18 testified that "I try and walk at least a mile each time" (AR. 83).

19       The ALJ provided not only specific and legitimate rationale, but also clear and  
 20 convincing rationale, for failing to credit fully medical opinions that plaintiff was limited  
 21 to sedentary work. *See Lester v. Chater*, 81 F.3d 821, 830-31 (9th Cir. 1996) (*citing*  
 22 *Andrews v. Shalala*, 53 F.3d 1035, 1043 (9th Cir. 1995); *Murray v. Heckler*, 722 F.2d  
 23 499, 502 (9th Cir. 1983)) (When an opinion from an examining or treating doctor is  
 24

1 contradicted by other medical opinions, the treating or examining doctor's opinion can be  
 2 rejected only "for specific and legitimate reasons that are supported by substantial  
 3 evidence in the record"); *see also Lester, supra*, 81 F.3d at 830 (*citing Embrey v. Bowen*,  
 4 849 F.2d 418, 422 (9th Cir. 1988); *Pitzer v. Sullivan*, 908 F.2d 502, 506 (9th Cir. 1990))  
 5 (the ALJ must provide "clear and convincing" reasons for rejecting the uncontradicted  
 6 opinion of either a treating or examining physician or psychologist) Therefore, the ALJ  
 7 did not err when formulating plaintiff's RFC.

8                   **(3) Did the ALJ err in his finding of fact (No. 5), determining that plaintiff  
 9 is capable of performing and maintaining full time employment in her  
 10 past occupation of cosmetologist?**

11 Plaintiff does not present any new arguments in support of this alleged error, but  
 12 instead relies on previous arguments regarding a limitation to sedentary work and the  
 13 existence of additional severe impairments (Dkt. 17, p. 12). These arguments already  
 14 have been addressed by the Court, *see supra*, sections 1 and 2.

15                   **(4) Did the ALJ err in not discharging his obligation to fully develop the  
 16 record, particularly given his rejecting of the treating and examining  
 17 and even non-examining medical sources' opinions, without evidence  
 18 or medical opinion sufficient to support rejection of those opinions and  
 19 plaintiff's testimony?**

20 Plaintiff contends that the ALJ erred by failing to discharge his duty to develop the  
 21 record (*see Dkt. 17, pp. 13-15*). Defendant argues, correctly, that the ALJ's duty to  
 22 develop the record is only triggered if "there is ambiguous evidence or when the record is  
 23 inadequate to allow for proper evaluation of the evidence" (Dkt. 20, p. 13 (*citing Mayes  
 24 v. Massanari*, 276 F.3d 453, 459-60 (9th Cir. 2001))).

1 Plaintiff again argues that the ALJ erred when evaluating the opinion from Dr.  
 2 Deutsch, however, plaintiff again only acknowledges some of the rationale provided by  
 3 the ALJ for failing to credit fully this opinion (including a reason that was provided in a  
 4 footnote by the ALJ) (*see AR. 27 n.5*). The Court already has discussed this opinion, *see*  
 5 *supra*, section 1, and furthermore finds that this record is not ambiguous and is not  
 6 inadequate to allow for proper review.

7       Although plaintiff contends that the ALJ erred by rejecting medical opinions  
 8 without further developing the record by obtaining a consultative examination or by  
 9 obtaining testimony from a medical expert, plaintiff does not cite to any evidence  
 10 demonstrating that the medical opinion evidence was ambiguous or inadequate to allow  
 11 for proper evaluation, and does not provide a discussion of the actual reasons offered by  
 12 the ALJ for failing to credit fully the medical opinion evidence (*see Dkt. 17, p. 14*). In  
 13 addition, although plaintiff contends that the ALJ erred by rejecting “all the opinions that  
 14 the plaintiff’s physical RFC was limited to no greater than sedentary,” plaintiff fails to  
 15 acknowledge that these opinions are contradicted by two state agency doctor who opined  
 16 that plaintiff “did not have a severe physical impairment” (AR. 36 (*citing AR. 96-103*);  
 17 *see also AR. 99 (“Physical impairments non-severe”), 101, 111*).  
 18

19       The ALJ provided a detailed and thorough discussion of the treatment record,  
 20 which is extensive, and thoroughly discussed the medical opinion evidence, providing  
 21 multiple reasons for failing to credit fully various medical opinions. *See Reddick v.*  
 22 *Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (*citing Magallanes v. Bowen*, 881 F.2d 747,  
 23 751 (9th Cir. 1989)) (the ALJ provides “specific and legitimate reasons that are supported

1 by substantial evidence in the record” for rejecting contradicted medical opinions by  
 2 “setting out a detailed and thorough summary of the facts and conflicting clinical  
 3 evidence, stating his interpretation thereof, and making findings”); *see also Lester, supra*,  
 4 81 F.3d at 830-31 (*citing Andrews, supra*, 53 F.3d at 1043; *Murray, supra*, 722 F.2d at  
 5 502).

6       The ALJ also provided much discussion regarding plaintiff’s reports of her  
 7 abilities and of her activities of daily living.

8       Based on a review of the record as a whole, the Court concludes that plaintiff has  
 9 not demonstrated that the record was inadequate to allow for proper review. In addition,  
 10 the Court concludes that plaintiff has not pointed to any ambiguous evidence triggering  
 11 the ALJ’s duty to develop the record through a consultative examination or testimony  
 12 from a medical expert.

14           **(5) Did the ALJ err in rejecting plaintiff’s credibility, e.g., concerning the  
 15 severity of her impairments?**

16       Plaintiff contends that the ALJ erred when failing to credit fully her credibility.  
 17 Defendant contends that there is no error.

18       If the medical evidence in the record is not conclusive, sole responsibility for  
 19 resolving conflicting testimony and questions of credibility lies with the ALJ. *Sample v.*  
 20 *Schweiker*, 694 F.2d 639, 642 (9th Cir. 1999) (*citing Waters v. Gardner*, 452 F.2d 855,  
 21 858 n.7 (9th Cir. 1971) (*Calhoun v. Balar*, 626 F.2d 145, 150 (9th Cir. 1980))). An ALJ is  
 22 not “required to believe every allegation of disabling pain” or other non-exertional  
 23 impairment. *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989) (*citing* 42 U.S.C. §

1 423(d)(5)(A) (other citations and footnote omitted)). If an ALJ rejects the testimony of a  
2 claimant once an underlying impairment has been established, the ALJ must support the  
3 rejection “by offering specific, clear and convincing reasons for doing so.” *Smolen v.*  
4 *Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996) (*citing Dodrill v. Shalala*, 12 F.3d 915, 918  
5 (9th Cir.1993)).

6 Here, again, plaintiff fails to find fault with all of the reasoning offered by the ALJ  
7 for the failure to credit fully plaintiff’s credibility, and instead selectively argues that  
8 some of the reasons were improper (*see* Dkt. 17, pp. 15-16). However, the Ninth Circuit  
9 has noted that “several of our cases have held that an ALJ’s error was harmless where the  
10 ALJ provided one or more invalid reasons for disbelieving a claimant’s testimony, but  
11 also provided valid reasons that were supported by the record.” *Molina v. Astrue*, 674  
12 F.3d 1104, 1115 (9th Cir. 2012) (citations omitted).

14 The ALJ relied on plaintiff’s inconsistent statements when failing to credit fully  
15 her credibility (AR. 33). For example, the ALJ noted that although plaintiff testified at  
16 her hearing that she left work as a cosmetologist in 2004 due to her physical symptoms  
17 and limitations, “she then affirmed that she had continued to work as a cosmetologist  
18 within her home and that she had left her employment in 2004 due in part to a change in  
19 the ownership of the salon” (AR. 34). The ALJ noted that in contrast to plaintiff’s  
20 indication “that she experienced back pain whenever using her hands from her waist to  
21 her shoulders” (AR. 32), she “testified that she was presently fixing her mother’s hair on  
22 a regular basis,” was “currently operating motor vehicles on a frequent basis,” and “was  
23 performing her own grocery shopping” (AR. 34). The ALJ also noted how despite stating  
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1 “that she had numbness and pain in her feet with prolonged standing,” (AR. 32), plaintiff  
 2 “stated that she could walk for a mile before needing to rest for 5 to 10 minutes,” had  
 3 indicated that “she was looking into starting a gym membership,” and, as noted  
 4 previously, testified that she walks twice a week and tries to “walk at least a mile each  
 5 time” (AR. 83).

6       Throughout the record, the ALJ noted and documented how plaintiff “has  
 7 continued to give conflicting reports as to her substance use” (AR. 26). For example, the  
 8 ALJ noted that in February 2012, plaintiff “reported daily use of Vicodin, marijuana, and  
 9 alcohol” (*id.* (*citing* AR. 568 (“has already had to drink alcohol and Vicodin today”))). In  
 10 contrast, the ALJ noted how in April 2012, plaintiff “gave unclear reports as to her  
 11 sobriety (‘at one point she stated that she has three years of sobriety; at another point she  
 12 indicated that she ‘drinks’’))” (AR. 27 (*citing* AR. 711)).

14       The ALJ also provided an extensive discussion of the medical evidence  
 15 throughout the opinion which demonstrated that plaintiff’s abilities exceed her alleged  
 16 limitations and that the objective medical evidence contradicts her allegations (*see, e.g.,*  
 17 AR. 33-34).

18       For the reason stated and based on the record as a whole, the Court concludes that  
 19 the ALJ provided clear and convincing reasons for failing to credit fully plaintiff’s  
 20 credibility.  
 21 //  
 22 //  
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 24 //

## **CONCLUSION**

Based on the stated reasons and the relevant record, the Court **ORDERS** that this matter be **AFFIRMED** pursuant to sentence four of 42 U.S.C. § 405(g).

**JUDGMENT** should be for defendant and the case should be closed.

Dated this 13<sup>th</sup> day of May, 2016.

J. K. Ward (matins)

J. Richard Creature  
United States Magistrate Judge